PUBLIC DOCUMENT

ADDITIONAL COMMENTS OF THE MEXICAN CORROSION-RESISTANT INDUSTRY REGARDING APPLICATION OF SECTION 312 OF THE NAFTA IMPLEMENTATION ACT TO IMPORTS FROM MEXICO OF CORROSION-RESISTANT AND OTHER COATED SHEET AND STRIP

I. INTRODUCTION

We hereby submit comments on behalf of Industrias Monterrey, S.A. de C.V. ("IMSA"); Zincacero, S.A. de C.V.; and IMSA, Inc. regarding application of Section 312 of the North American Free Trade Agreement Implementation Act[1] to imports from Mexico of Corrosion-Resistant and Other Coated Sheet and Strip, (hereinafter "Corrosion-Resistant Sheet"). Galvak, S.A. de C.V., a Mexican producer of Corrosion-Resistant Sheet represented by Manatt, Phelps & Phillips LLP, supports these comments. We refer throughout these comments to IMSA, Zincacero, and Galvak jointly as the "Mexican Corrosion-Resistant Industry."[2]

In our prior comments, we discussed why the President should reach a negative determination under section 312 of the NAFTA Implementation Act with respect to imports from Mexico of Corrosion-Resistant Sheet. While the International Trade Commission makes

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1 Pub. L. No. 103-182, 107 STAT. 2057 (1993), as amended, 19 U.S.C. § 3372 (hereinafter "the NAFTA Implementation Act").

2 The comments submitted here support those set forth by the Mexican Corrosion-Resistant Industry throughout the proceedings before the U.S. International Trade Commission ("ITC") and the Trade Policy Staff Committee ("TPSC") of the Office of the U.S. Trade Representative. Throughout these comments, the public and confidential versions of the ITC's Staff Report are referred to as "PR" and "CR" respectively. The ITC's report is referred to the "Commission Report."

findings and reports to the President, the President, alone, has the authority to exclude imports from Mexico.[3]

We also provided a summary of the facts that demonstrate that imports of Corrosion-Resistant Sheet from Mexico did not "contribute importantly" to any serious injury suffered by the U.S. industry.[4] These facts include that: (1) in the year 2000, imports of Corrosion-Resistant Sheet from Mexico were at their lowest levels in both absolute terms and relative to apparent consumption and domestic production; (2) from 1998-2000, imports of Corrosion-Resistant Sheet declined 28.33% in contrast to the 7.1% increase in global imports; (3) from 1996-2000, imports of Corrosion-Resistant Sheet from Mexico declined by 12.89% in contrast to the 7.85% increase in global imports; (4) in the first six months of 2001, imports of Corrosion-Resistant Sheet from Mexico declined by 37.56%; and (5) imports of Corrosion-Resistant Sheet from Mexico consistently have been priced above U.S. products.

We previously also discussed why, analyzed on an "all flat" product basis, the President should reach a negative determination with respect to imports from Mexico.[5] This discussion included the facts that: (1) imports from Mexico of flat-rolled steel have been declining since 1999; (2) imports from Mexico of flat-rolled steel in relation to U.S. production have been declining and are at insignificant levels; (3) Mexico's market share has been declining since 1999 and has always been at insignificant levels; (4) imports from Mexico did not contribute importantly to the 1998 import surge; (5) an analysis of the various sub-categories of flat-rolled

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[3] *See* White & Case January 4, 2002, Comments on Behalf of Industrias Monterrey, S.A. de C.V.; Zincacero, S.A. de C.V.; and IMSA, Inc. ("IMSA Comments"), at 3-4.

[4] IMSA Comments, at 5-12.

[5] IMSA Comments, at 13-24.

steel products confirms that imports from Mexico do not "contribute importantly" to any serious injury; and (6) imports from Mexico do not threaten to injure U.S. producers.

In addition, our prior comments discussed why, if the President reaches an affirmative determination under section 312 of the NAFTA Implementation Act, it nonetheless would be appropriate for the President to exclude imports of Corrosion-Resistant Sheet from Mexico from any remedy based on the factors the President is directed to consider under section 203 of the Trade Act of 1974.[6] These factors include NAFTA-specific considerations that any decision to apply a remedy against Mexico must take into account (1) the impact on the United States industries and firms as a result of international obligations regarding compensation; (2) the short- and long-term economic and social costs of the actions relative to their short- and long-term economic and social benefits; and (3) the national interest issues related to NAFTA integration.

Finally, we previously discussed the NAFTA provisions and the NAFTA Implementation Act provisions that require a unique and less restrictive remedy on imports from Mexico, should the President decide to impose a remedy.[7] We described the consequences of any tariffs or quotas on Mexican imports and demonstrated that any tariff imposed would violate NAFTA provisions.

In its submissions, the U.S. industry has taken no position on the exclusion of Mexico. They have provided no legal argument or factual basis for its inclusion in any remedy. Their

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[6] IMSA Comments, at 25-32.

[7] IMSA Comments, at 33-40.

silence, we believe, reflects the fact that the U.S. industry does not perceive Mexico as the problem. Consequently, at this point in time, there is little to rebut.[8]

Since the filing of our original submission, however, two additional events have occurred that require a response and comments. First, on January 3, 2002, the USTR requested additional information regarding the ITC's recommendation. In part, the USTR letter stated:

> Section 312(a) of the NAFTA Implementation Act requires the President to make a determination as to whether imports from Canada or Mexico account for a substantial share of total imports or contribute importantly to the serious injury, or threat thereof, found by the ITC. In the event that the President decides that conditions require the exclusion of both Canada and Mexico from the following determinations or equally divided determinations, could you please report on whether increased imports of the following products from all sources other than Canada and Mexico are a substantial cause of serious injury or threat of serious injury, as those terms are interpreted under sections 201-204 of the Trade Act, to the domestic industries, as such industries were defined by the individual Commissioners: (i) Certain carbon flat-rolled steel (carbon and allow slabs, plate, hot-rolled steel, cold-rolled steel, and coated steel) ...[9]

As discussed below, we believe that the exclusion of flat-rolled steel products from Mexico (in addition to Canada) does not alter the relevant factual record or conclusions reached by the ITC.

Second, on January 3, 2002, the ITC determined that it would waive privilege with respect to the results of its economic modeling and the impact of its recommended remedies.[10] The ITC released that information on January 4, and made public versions available on the ITC website on January 14, 2000. The ITC's own economic analysis confirms that the ITC's increased tariff recommendations (of 20% or 40%) will reduce imports from Mexico to levels

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[8] In comments to the TPSC on January 4, 2002, the United Steelworkers of America stated that Canadian imports in general were not contributing to the injury suffered by the domestic industry. No statement was made with respect to imports of Mexican flat-rolled steel.

[9] See January 3, 2002, Letter from Robert B. Zoellick, USTR, to Stephen Kopland, Chairman, U.S. International Trade Commission.

[10] *See* January 3, 2002 Letter from Donna R. Koehnke to Donald B. Cameron.

dramatically below any year during the period of investigation. The implementation of any such remedy thus would be contrary to Article 802 of the NAFTA, which prohibits any remedy "that would have the effect of reducing imports of a good from a NAFTA party below the trend of imports for the good from that Party over a recent representative base period with allowance for reasonable growth."[11]

II. UNDER THE STANDARDS ESTABLISHED BY U.S. LAW AND THE NAFTA, IMPORTS FROM MEXICO HAVE NOT "CONTRIBUTED IMPORTANTLY" TO ANY SERIOUS INJURY, OR THREAT THEREOF, FACED BY U.S. PRODUCERS

During the TPSC meeting, representatives of CANACERO were asked about a quotation for which the TPSC could not find the relevant citation. The implication of the question was that the TPSC did not believe that the quoted standard had a basis under U.S. law. In fact, as pointed out by CANACERO's counsel, the citation contained a typographical error, but that the standard quoted is applicable under U.S. law and is uniquely relevant to NAFTA countries.[12]

Section 311 of the NAFTA Implementation Act provides a special legal standard for determining whether imports from Mexico have contributed importantly to any serious injury, or threat thereof, suffered by the U.S. industry:

> [I]mports from a NAFTA country or countries normally shall not be considered to contribute importantly to serious injury, or the threat thereof, if the growth rate of imports from such country or countries **during the period in which an injurious increase in imports occurred** is appreciably lower than the growth rate of total imports from all sources over the same period.[13]

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[11] NAFTA Article 802.5(b).

[12] *See* January 14, 2002 Comments to the TPSC from Manatt, Phelps & Philips on behalf of CANACERO.

[13] 19 U.S.C. §3371(b) (emphasis added); *see also* North American Free Trade Agreement, Article 802(2)(b), which defines the relevant period of review in relation to the "contribute importantly" standard as "the period in which the injurious **surge** in imports occurred."

It is this standard that forms, in part, the basis for the exclusion of Mexico. At precisely the time the alleged injurious surge from 1997 to 1998 occurred, imports from Mexico were relatively stable.[14] Furthermore, the relatively small increase in Mexican imports was the result of a growth in imports of Mexican slab; the import volume of other flat-rolled steel from Mexico actually declined from 1997 to 1998.[15]

The alleged "injurious increase" in flat-rolled imports occurred in 1998. In its determinations and recommendation with regard to flat-rolled steel products, the ITC found that the U.S. domestic industry earned reasonable operating profits and made substantial capital investments in a growing domestic market in 1996 and 1997.[16] However, the ITC then focused on the "dramatic increase in volume of imports in 1998,"[17] noting that "domestic prices began to fall markedly in 1998"[18] and that the "impact of the 1998 surge in imports on the domestic industry is undeniable."[19] The ITC also noted that imports actually declined in 1999 and 2000.[20]

It is precisely during the period that the ITC found that imports surged and the domestic flat-rolled industry began to suffer increasingly poor financial performance that Mexico had

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[14] *See* PR at Table FLAT-3.

[15] *See* PR at Tables Flat-3 and FLAT-4.

[16] Commission Report (Public) at 51.

[17] Commission Report (Public) at 59.

[18] Commission Report (Public) at 51.

[19] Commission Report (Public) at 60. At the same time that domestic prices began to fall in 1998, U.S. operating incomes began to decline, domestic employment levels began to drop, domestic capacity utilization began to decline steadily, and there was a significant idling of production facilities. *Id.* at 51-55.

[20] Commission Report (Public) at 60.

stable growth rates and decreasing import market share. From 1997 to 1998, Mexican imports increased only 3.6% (or approximately 80,000 tons). In contrast, non-NAFTA imports surged from 15,555,456 tons in 1997 to 21,659,576 tons in 1998, an increase of **over 39%** (or over 6,000,000 tons).[21] Thus, in relation to the 6,000,000 ton increase, Mexico's increase was only approximately 1%. In addition, from 1997 to 1998, NAFTA's flat-rolled steel import market share decreased from 21.21% to 16.12% while the non-NAFTA import share increased from 78.79% to 83.88%.[22] Under such circumstances, it is unclear how it can be concluded that Mexico contributed importantly to the alleged injurious surge.

Trends with respect to Mexican imports of flat-rolled products thus diverge significantly from trends in global imports, especially with respect to the period in which the alleged injurious surge in imports occurred.[23] Based on these trends and the other arguments presented in our brief submitted on January 4, 2002, the President should find that imports from Mexico do not "contribute importantly" to any injury suffered by the U.S. industry.

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[21] PR at Table FLAT-3.

[22] PR at Table FLAT-3.

[23] In other parts of its opinion, the ITC specifically focused on whether the NAFTA countries contributed to injurious surges. For example, in its analysis of the effects of Canadian imports of hot-rolled bar, the ITC specifically identified "the increase in import quantities from Canada" as a contributing factor to "the import surges of 1998 and 2000." Commission Report (Public) at 100; *see also* Commission Report (Public) at 108 (because "imports from Canada increased during each full year of the period examined, they contributed to the import surges of 1998 and 2000"). The ITC inexplicably failed to perform such an analysis with regard to imports of flat-rolled products from Mexico.

III. EXCLUDING ALL FLAT-ROLLED STEEL FROM MEXICO (IN ADDITION TO CANADA) DOES NOT ALTER THE FACTUAL BASIS OR RATIONALE OF THE ITC INJURY FINDING

When determining the appropriate safeguard measures to impose on imports, the TPSC must ensure that any recommendations to the President are consistent with WTO obligations. In *United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities*, the WTO found that the United States had violated its WTO obligations when it imposed safeguard measures on wheat gluten.[24] In its original investigation, the United States had included imports from Canada when it made its injury determination, but then excluded Canada from the remedy, pursuant to its NAFTA obligations.[25] The WTO appellate body found that any safeguard investigation must be consistent with regard to the injury determination and the remedy imposed, and that the United States had violated its WTO obligations because it had failed to make a separate injury determination as to wheat gluten imports excluding Canada.

Section 312(a) of the NAFTA Implementation Act requires **the President** to make a determination as to whether imports from Mexico or Canada account for a substantial share of total imports or contribute importantly to the serious injury, or threat thereof, found by the U.S. International Trade Commission ("ITC"). To ensure that any injury and remedy determinations are consistent (and that they therefore meet WTO obligations), the U.S. Trade Representative has requested the ITC to provide additional information as to whether – in the event the President decides that conditions require the exclusion of both Mexico and Canada from any action taken under Section 203 of the Trade Act – increased imports of products from sources **other than**

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[24] *United States - Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities*, WT/DS166/AB/R, issued December 22, 2000.

[25] *Wheat Gluten*, USITC Inv. No. TA-201-67, Pub. No. 3088 (March 1998).

Mexico and Canada are still a substantial cause of serious injury or threat of serious injury to the domestic industries.[26] The information collected by the ITC shows that excluding Mexico (in addition to Canada) will not alter the factual basis or rationale of the ITC's injury finding.

Based on the import volumes and import trends above, it is clear that the ITC would have reached the same result on injury had it excluded imports from both Mexico and Canada from its flat-rolled imports injury analysis. First, exclusion of imports from Mexico and Canada does not alter the ITC's analysis of factors with respect to import levels or trends. As noted above, flat-rolled steel imports from non-NAFTA sources increased from 14,893,990 tons in 1996 to 17,299,977 tons in 2000, an increase of **over 16%**. More importantly, imports from non-NAFTA countries surged in 1998 at 21,659,576 tons, an increase from the 1997 level of **over 39%**.[27] Over the same period, the value of non-NAFTA imports increased **only 4.28%**.[28] Non-NAFTA flat-rolled imports also increased relative to domestic production. Such imports were equivalent to 7.9% of domestic production in 1996 and 11.1% in 1998. Non-NAFTA imports decreased to 8.5% of domestic production in 2000, but were still above the 1996 figure.[29] In addition, the dramatic increase in the volume of non-NAFTA imports in 1998 – at the midpoint of the period examined – coincided with the period that the ITC found sharp declines in the

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[26] See January 3, 2002, Letter from Robert B. Zoellick, USTR, to Stephen Kopland, Chairman, U.S. International Trade Commission.

[27] PR at Table Flat-3. In contrast, the volume of NAFTA imports remained relatively stable, and the share of NAFTA imports to total imports actually declined. *Id.* Thus, exclusion of imports from NAFTA would not materially affect import levels or trends.

[28] PR at Table Flat-3.

[29] PR at Table Flat-3. Over the same period, NAFTA imports constituted only 2.1% of U.S. production, a figure that increased slightly to 2.3% in 1999 before returning to 2.1% in 2000. Again, the constant low levels of NAFTA imports suggest that exclusion of imports from NAFTA would not change the ITC's injury analysis.

domestic industry's performance and condition, which occurred despite growing U.S. demand.[30] Finally, excluding Mexico and Canada from the database does not appreciably alter projections for foreign production, capacity, and exports to the United States. Capacity, production, and exports to the United States from non-NAFTA countries are all projected by the ITC to remain at high levels during the period 2001-2002.[31] Consequently, the exclusion of Mexico and Canada does not alter the factual basis upon which the ITC made its decision.

The reason that exclusion of the NAFTA countries does not alter the factual record or the analysis is that the NAFTA countries have not contributed to the problem:

- During the "surge" period from 1997 to 1998, NAFTA imports actual declined while imports from all other countries increased over 6,000,000 tons or 39%.
- Also, during the "surge" period, NAFTA's import share dropped from 21.2% to 16.1% and NAFTA's ratio to U.S. production dropped from 2.2% to 2.1%. At the same time, imports from the rest of the world increased their import share from 78.8% to 83.9% and increased their ratio to domestic production from 8.1% to 11.1%.
- Over the entire period of investigation, imports from NAFTA increased by only approximately 250,000 tons while imports from all other countries increased by over 2 million ton, or 16%.[32]
- Excluding slab imports from the data (for which there is a separate remedy remcommendation), over the entire period of investigation, while imports from all other countries increased by 1,857,802 tons (a growth of 18.5%), **imports from NAFTA actually decreased** by 161,074 tons (a decline of 6.6%).[33]

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[30] Commission Report (Public), at 59.

[31] PR at Tables FLAT-27-29.

[32] PR at Table FLAT-3.

[33] PR at Tables FLAT-3 and FLAT-4.

A closer view of the facts also reveals that the trends in levels of imports from NAFTA and non-NAFTA countries **are, in fact, opposite to each other in each key period**. That is, the data show that NAFTA imports have been relatively stable from 1996-2000, but when there have been increases or decreases, they have run counter to import trends from the rest of the world. In 1998, for example, the volume of NAFTA imports **decreased** from the previous year while non-NAFTA imports **increased over 6 million tons**. In line with these volume trends, as noted above, NAFTA's import market share decreased dramatically from 21.21% in 1997 to 16.12% in 1998 while the non-NAFTA import share increased from 78.79% to 83.88%. The following year, when the volume of non-NAFTA imports decreased, NAFTA imports showed a divergent increase. Similarly, in 2000, when non-NAFTA imports increased, NAFTA imports again conversely decreased. The opposite trends in imports from NAFTA and non-NAFTA sources coupled with the relatively small volume of NAFTA imports compared to non-NAFTA imports illustrates that the import trends regarding NAFTA flat-rolled products do not parallel the import trends from the rest of the world.[34] Rather, NAFTA producers, along with their U.S. counterparts, form a common market that is affected by the level of non-NAFTA imports. When non-NAFTA import surges occur, they take market share from Mexican and Canadian producers

[34] In his separate views on injury, Commissioner Devaney analyzed similar divergent trends to conclude that imports of carbon and alloy welded tubular products from NAFTA countries were not contributing to the serious injury suffered by the domestic industry, noting that Canadian imports "did not follow the same trend as the majority of imports" and "when other imports increased by 38.7 percent, Canadian imports were steady," and that Mexican imports similarly "did not follow the same trend as the majority of imports" and "Mexican imports show a slowing of growth from 1998 to 1999 while other imports were surging, and a drop in imports during interim period, as other imports increased." Commission Report (Public), at 327.

just as they do from U.S. producers. When non-NAFTA imports decrease, U.S. consumers then look to NAFTA producers to meet their demand.

IV. ANY TARIFF IMPOSED ON MEXICAN IMPORTS WILL ALMOST CERTAINLY VIOLATE NAFTA SECTION 802(5).

In its January 4, 2002 comments, the Mexican Corrosion-Resistant Industry explained why the facts warrant a negative determination under section 312 of the NAFTA Implementation Act, or the exclusion of imports of Corrosion-Resistant Sheet from Mexico based on the factors in section 203 of the Trade Act of 1974. Nevertheless, if the President decides to take an action against imports of Corrosion-Resistant Sheet from Mexico, the remedy must comply with U.S. obligations under the NAFTA. Analyses by the ITC demonstrate, however, that any tariff will almost certainly violate NAFTA provisions.

A. Chapter 8 of the NAFTA Establishes Unique NAFTA Limitations On Any Remedies In Any Form

The general standard applicable to global import remedies cannot be applied to imports from Mexico. Rather, the remedy standard set forth in Article 802.5 of the NAFTA must be met. NAFTA Article 802(5) unambiguously states that no party may impose restrictions on a good in a safeguard action "that would have the effect of reducing imports of such good from a Party below the trend of imports for the good from that Party over a recent representative base period with allowance for reasonable growth." Article 802.5(b), thus, imposes the following unique NAFTA limitations on remedies:

- No action of any kind may have the effect of reducing imports below the trend of imports from Mexico over a "recent representative base period." (NAFTA Art. 802.5(b))
- Any representative period used for remedy must be based on the most "representative period" for imports from Mexico, not the period applicable to total imports. (NAFTA Art. 802.5(b))

- No action of any kind may have the effect of limiting "reasonable growth" above the trend. (NAFTA Art. 802.5(b))

As described in our January 4, 2002 comments, these limitations differ from those applicable to global imports in several important ways:

First, the types of restrictions covered by the NAFTA limitations and the global limitations are different. Article 802.5(b) applies to **all** "restrictions on a good" imported from Mexico, regardless of whether the restriction is in the form of a quota, a duty, or a tariff-rate quota. In contrast, a similar type of limitation set forth in Section 203(e)(4) of the Act with respect to global imports applies only to quantitative restrictions.[35]

Second, the NAFTA standard creates a condition related to the "trend of imports in the representative period." No such "trends" standard exists under the global standard. Under Article 802.5(b) of the NAFTA, the President may not impose a restriction that would cause imports to fall below the "**trend** of imports for the good" during the base period. In contrast, under Section 203(e)(4) of the Act, the President need not consider the trend during the representative period.[36] Also, the NAFTA "representative period" relates to what is representative of imports from Mexico, which may be different than that which is representative for non-NAFTA countries.[37]

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[35] 19 U.S.C. § 2253(e)(4).

[36] *Id.* § 2253(e)(4).

[37] The Commission adopted, with no analysis, the same period for Mexico (1996-2000) as it did for total imports to determine whether an increase in imports had occurred. *Compare Steel*, Inv. No. TA-201-73, USITC Pub. 3479 (Dec. 2001) at 49 (total imports) *with id.* at 66 (imports from Mexico).

Third, under Article 802.5(b), the President's remedy must allow for "reasonable **growth**" in imports from Mexico above the recent trends, regardless of the period for which action is taken.

Thus, the standard applicable to imports from Mexico is more liberal and less discretionary than that applicable to global imports. For example, with regard to the imposition of a tariff, the only limitation on the President's authority under U.S. law is that he may not increase the tariff more than 50% percent *ad valorem* above the existing rate.[38] Under the NAFTA, the President does not have the discretion to impose a tariff on imports from Mexico that would reduce imports below the trend of imports from Mexico over a recent representative base period, nor can the President impose a tariff that does not allow for reasonable growth.

B. The Recommendations of the Commissioners Proposing Increased Tariff Rates Recommended Do Not Comply with U.S. NAFTA Obligations and, Therefore, Cannot Be Adopted By the President

As discussed above, the NAFTA contains unique limitations on the relief that may be imposed on a NAFTA partner. The 20% *ad valorem* tariff recommended by the Commission violates each of the NAFTA limitations, as does the 40% *ad valorem* tariff recommended by Commissioner Bragg.

First, either the 20% or 40% tariff increase would lead to a reduction in the volume of imports from Mexico below recent representative levels. In our January 4, 2002 comments, we described the effects of a tariff on Mexican imports based on an economic study published by the Trade Partnership Worldwide. This study estimated that a 20.7% tariff increase would lead to a 35.9% reduction in the volume of imports. Since January 4, 2002, the ITC has decided to make

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[38] *See id.* § 2253(e)(3).

available to the public the models it used to show the effects of the various remedies under consideration. **The ITC's own economic models support the conclusion that any tariff imposed on Mexican imports would reduce imports from Mexico and result in a decline in import volume below recent representative levels.**

For example, according to the ITC COMPAS model, a 20 percent tariff would result in an immediate reduction in the Mexican import quantity of between 30 and 39 percent.[39] Similarly a tariff level of 40 percent would result in an immediate reduction in the Mexican import quantity of as high as 50% to 61%.[40] If a 20% or 40% tariff was applied to 2000 imports, such a tariff could reduce flat-rolled imports from Mexico (excluding slabs, for which a tariff-rate quota was recommended) from approximately 800,000 tons to as little as 571,306 tons or 406,073 tons, respectively.[41] These levels are **17% to 41% lower than the lowest level of any year during the period of investigation**.[42]

The 800,000 ton figure used in the calculations above is not merely illustrative. In establishing the representative periods of 1996, 1997 and July 2000-June 2001, Commissioner Okun arrived at a volume of 742,482 tons for imports of flat products (excluding slabs) from

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[39] Plate, up to a 39.6% decline; hot-rolled, up to a 30.6% decline; cold-rolled, up to a 31.1% decline; and coated products, up to a 32.0% decline. *See* ITC Document EC-Y-046, at Tables FLAT-7 to FLAT-10.

[40] Plate, up to a 61.4% decline; hot-rolled, up to a 51.1% decline; cold-rolled, up to a 50.7% decline; and coated products, up to a 51.4% decline. *See* ITC Document EC-Y-046, at Tables FLAT-7 to FLAT-10.

[41] These figures were calculated by applying the product-specific percentages in footnotes 38 and 39 to the 2000 Mexican import quantities of plate, hot-rolled, cold-rolled, and coated products, and cumulating the sums. *See* PR at Tables FLAT-3, FLAT-5, FLAT-6, FLAT-7 and FLAT-9.

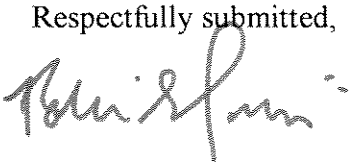
[42] *See* PR at Tables Flat-3-4. In 1996, the volume of all flat-rolled imports from Mexico (excluding slab) was 685,072 tons, the lowest of any year from 1996 to 2000.

Mexico in the first year. Thus, even the lower tariff rate increase proposed by the other Commissioners (20%) could result in a 23% lower volume of imports than the volume of imports from a "representative period" identified by Commissioner Okun (*i.e.*, 571,306 tons versus 742,482 tons). Such a decline violates the NAFTA requirement that no remedy result in a decline in import volume below recent representative levels, and illustrates that any tariff will almost certainly violate NAFTA provisions and thus cannot be adopted by the President.

V. CONCLUSION

For the reasons discussed above and in our submission of January 4, 2002, the President should reach a negative determination under section 312 of the NAFTA Implementation Act concerning imports from Mexico of Corrosion-Resistant Sheet or the broader category of flat-rolled products. The President should accordingly exclude imports from Mexico from any remedy imposed on imports from other countries. Even if the President makes an affirmative finding under section 312 of the NAFTA Implementation Act, the factors to be considered under section 203 of the Trade Act of 1974 warrant excluding imports from Mexico. Excluding imports from Mexico would be consistent with U.S. WTO and NAFTA obligations, and would ensure that the fundamental integration that has occurred, which has significantly benefited U.S. producers, is not disrupted.

Respectfully submitted,



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